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THE HONORABLE Mary Yu
Sentencing: December 7, 2012 at 1:00 p.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 12-C-04115-2 SEA
)	
vs.)	STATE'S SENTENCING
)	MEMORANDUM
MICHAEL J. EVANS,)	
)	
)	Defendant.
)	
)	
)	

I. CHARGES

Michael Evans was found guilty of one count of Theft of a Motor Vehicle and one count of Trafficking in Stolen Property in the First Degree, in violation of RCW 9A.56.065, 9A.56.020(1), and 9A.82.050, as charged in Counts I and II of the Amended Information. The jury also answered in the affirmative on the special jury interrogatory form as to each of those counts. That form asked the jury to find whether the State had proved beyond a reasonable doubt that the defendant knew or should have known that the victim of the thefts, Leon Lucas, was particularly vulnerable or incapable of resistance and that the victim's vulnerability was a substantial factor in the commission of the offense, pursuant to RCW 9.94A.535(3)(b).

1 **II. DEFENDANT'S STANDARD SENTENCING RANGE**

2 The defendant's standard sentencing range is 43-57 months on the Theft of a Motor
3 Vehicle charge, and 63-84 months on the Trafficking in Stolen Property charge, given his
4 offender score of 10.

5 **III. STATE'S SENTENCING RECOMMENDATION**

6 The State recommends that the Court impose the following sentence for defendant
7 Michael Evans:

- 8 1. 90 months of incarceration;
- 9 2. Restitution in the amount of \$3,520;
- 10 3. No contact with Leon Lucas;
- 11 4. No work on a paid or volunteer basis with vulnerable adults;
- 12 5. Victim Penalty Assessment, DNA fee, Court Costs, Recoupment for Cost of Appointed

13 Counsel.

14 **IV. JUSTIFICATION FOR SENTENCE RECOMMENDATION**

15 The State is requesting an exceptional sentence of six months above the high end of the
16 standard range, based on the jury's finding that that the victim was particularly vulnerable or
17 incapable of resistance. As the Court presided over the trial of this matter, the State will not
18 rehash all of the details of that testimony here.

19 In brief, around October of 2011, the defendant responded to the "For Sale" sign that
20 Leon Lucas had placed in the window of his recently deceased wife's 1999 Cadillac. Lucas
21 invited the defendant into his home, and they agreed on a price of \$3895 for the car. Lucas
22 accepted \$100 as a down payment. The defendant then proceeded to drive away with the car and
23 title. Occasionally, through his girlfriend and co-defendant, Yana Ristick, the defendant made

1 small cash payments to Lucas for the car; these payments totaled \$275. On November 9 or 10,
2 2011, the defendant sold Lucas' Cadillac to William O'Brien. The defendant told O'Brien he
3 was selling the car for his father. Leon Lucas is 80 years old and is in the early stages of
4 dementia. As a result, his judgment is extremely impaired, and his short-term memory is also
5 impaired. This incident occurred one week after his wife of fifty years had died.

6 **V. RESTITUTION**

7 A court need not hold a separate evidentiary hearing to determine the amount of
8 restitution if the evidence at trial is sufficient to support the amount ordered. RCW
9 9A.20.030(1); State v. Moreau, 35 Wn. App. 688, 699 P.2d 483 (1983). Evidence supporting the
10 amount of restitution ordered is sufficient if it affords a reasonable basis for estimating the
11 victim's loss and the sentencing court is not reduced to speculation or conjecture at arriving at the
12 amount. State v. Bush, 34 Wn. App. 121, 659 P.2d 1127 (1983). The State need only prove the
13 amount of restitution by a preponderance of the evidence. Id. at 124; D. Boerner, Sentencing in
14 Washington: A Legal Analysis of the Sentencing Reform Act of 1981, Section 4.8, at 4-16.

15 Leon Lucas testified that he sold the car to Evans for \$3895. He testified that he received
16 a total of \$375 in payments from Evans and/or Ristick. The State therefore requests restitution in
17 the amount of \$3520.

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VI. CONCLUSION

For all of the reasons set out above, the State respectfully asks this Court to follow its sentence recommendation as set out above.

DATED this 21st day of November, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
PAGE ULREY, WSBA #23585
Senior Deputy Prosecuting Attorney